

## **The Taxpayer Bill of Rights Act of 2012**

The Taxpayer Bill of Rights Act of 2012 would improve services and protect the rights of US taxpayers, particularly those with low and moderate incomes. In particular, the Act would: protect taxpayers from unscrupulous tax return preparers and refund anticipation loan providers; clarify taxpayers' rights and obligations; support tax preparation and representation clinics; and enhance low-income taxpayers' access to financial institutions.

The Act contains many provisions reflecting longstanding recommendations included in the National Taxpayer Advocate's Annual Reports to Congress.

Following is a summary of the Act:

### **TITLE I. TAXPAYER BILL OF RIGHTS**

**Clarify a Taxpayer Bill of Rights.** Providing a clear codification of taxpayer rights and responsibilities is the National Taxpayer Advocate's #1 legislative recommendation in her most recent report to Congress. As the National Taxpayer Advocate has explained: "In a time when the IRS will feel pressure to bring in additional tax revenue, it is crucial to provide taxpayers with strong protections for their rights." The Act would ensure the Internal Revenue Code contains a comprehensive Taxpayer Bill of Rights that explicitly and transparently sets out taxpayer rights and obligations. This provision would not confer any rights or obligations not already provided for under current law.

### **TITLE II. PREPARATION OF TAX RETURNS**

**Authorize Funding for Volunteer Income Tax Assistance (VITA) Programs.** VITA programs across the country offer free tax assistance to low- to moderate-income individuals who cannot afford professional assistance. More than 50,000 VITA volunteers prepare basic tax returns for these taxpayers; typically VITA programs focus on at least one specific underserved group with special needs (*e.g.*, persons with disabilities, non-English speaking persons, Native Americans, rural taxpayers, and the elderly). In 2011, VITA centers prepared 1.5 million tax returns across 5,700 sites and brought back approximately \$2 billion in tax refunds to taxpayers whose adjusted gross income averaged \$21,000.

The Act authorizes a \$35 million grant program for VITA programs nationwide. Additional federal support will enable community VITA programs to reach more underserved low-income taxpayers, resulting in more families accessing vital tax credits, such as the Earned Income Tax Credit (EITC) and the Child Tax Credit (CTC).

**Authorize Referrals and Funding for Low-Income Taxpayer Clinics (LITCs).** The Act authorizes the Treasury Secretary to refer taxpayers to Low-Income Taxpayer Clinics. These clinics, typically operated by community organizations and law schools, provide

representation to low-income taxpayers in disputes with the IRS. The Act also authorizes an increase in funding for LTC grant programs to \$20 million.

### **Regulate Compensated Tax Return Preparers.**

- Nearly all professions – from beauticians to mortuaries to opticians – are regulated at the state level. But with only a handful of exceptions, states do not regulate tax return preparers. For years, taxpayers, tax professionals, and the National Taxpayer Advocate called for federal regulation of unenrolled paid tax return preparers (i.e. paid preparers who are not attorneys, Enrolled Agents or Certified Public Accountants) and in early 2010, the IRS announced a framework and began implementation of a new regulatory framework to ensure registration and competency of paid tax return preparers.
- Regulations to regulate tax return preparers have been promulgated and implementation of the Commissioner's framework is well underway. This legislation will codify the existing authority of the IRS to regulate unenrolled tax return preparers.

**Monitor Tax Refund Delivery Products.** Refund Anticipation Loans (RALs) are extremely high-cost bank loans secured by a taxpayer's expected refund – loans that last 7-14 days until the actual IRS refund arrives and is used to repay the loan. RALs are aggressively marketed by paid income-tax preparers, which advertise "Instant Refunds" or "Quick Cash," disguising that they are selling advance loans on anticipated tax refunds. The Act requires Treasury to establish a registration program for all those involved in the process of facilitating a tax refund delivery product (RDP), including RALs.

- **Registration.** RDP facilitators will be required to register annually with Treasury.
- **Additional Disclosures.** RDP facilitators will be required to disclose in writing and in an easily understandable format the taxpayer's options for receiving tax refunds (listed from least expensive to most expensive), the RDP's loan terms and fee schedule, and any other costs that the taxpayer may incur in filing a tax return.
- **Refund Indicator.** Treasury will not issue a Refund Indicator (a score on which RDP facilitators rely before issuing a RDP) to a RDP facilitator unless Treasury first determines that the taxpayer's refund would not be prevented by debts owed on student loans, child support, or by other provisions in the Tax Code. This will minimize the likelihood that a taxpayer will be issued a loan based on a refund that will not ultimately materialize (and which s/he would nonetheless be required to repay).

**Assessment of Civil Penalties Against Preparers of Fraudulent Returns** – Currently, when unscrupulous preparers that only make up a small segment of the tax return preparer community defrauds taxpayers and the IRS by altering taxpayers' returns without their knowledge, the IRS may penalize the preparer, but the amount of the penalty is

generally far below the amount of the refund received by the preparer. The Act will provide that when the issuance of an erroneous refund to a return preparer is due to fraud, the IRS may impose a penalty, in addition to other penalties provided by law, equal to 100% of that erroneous refund.

#### Additional Provisions

- **Clarification of Enrolled Agent Credentials**
- **Ban on Audit Insurance**
- **Clarification of Taxpayer Assistance Order Authority and Taxpayer Advocate Directives**

### **TITLE III. IMPROVING TAXPAYER SERVICES**

**Improve Taxpayer Services.** The Act expresses the Sense of Congress that the IRS should, within 2 years:

- reduce the time between receipt of the return and remitting a refund;
- expand assistance to low-income taxpayers;
- allocate resources to assist low-income taxpayers in establishing accounts at financial institutions that receive direct deposits from Treasury;
- deliver tax refunds on debit and prepaid cards and other electronic means to assist individuals that do not have access to financial accounts and institutions;
- establish a pilot program for satellite walk-in centers to be located in rural underserved communities; and
- establish a pilot program for mobile tax return preparation offices in lower income communities, at least one of which would be near or on a Native American reservation.

**Requires Additional Protections Prior to the Filing of a Federal Tax Lien.** The IRS has a number of tools at its disposal to ensure tax compliance, but use of these tools must be balanced with the need to ensure taxpayers do not suffer long-term harm as a result, even without accompanying improvements in revenue collection. One such tool is filing a Notice of Federal Tax Lien (NFTL) when a taxpayer owes back taxes. But as the National Taxpayer Advocate explains in her 2009 Report to Congress: “[T]he filing of a tax lien can significantly harm the taxpayer’s credit and affect his or her ability to obtain financing, find or retain a job, secure affordable housing or insurance, and ultimately pay the outstanding tax debt. For these reasons, the National Taxpayer Advocate believes that the IRS should not automatically file NFTLs but instead should carefully consider and balance these competing interests when determining whether a lien filing is appropriate.” The Act would require the IRS to make individualized determinations before filing a NFTL, and also requires consideration of several factors before these determinations are made (including the amount due, the taxpayer’s compliance history, and any extenuating circumstances).

**Establish a Demonstration Program to Provide Accounts to the Unbanked.** *IRS data show that of the 60 million federal tax refunds that were issued via paper checks in 2005, almost half went to households earning \$30,000 or less. These households are most likely to*

lack access to reasonably-priced financial services – and thus most likely to pay a disproportionate amount of their income to conduct routine financial transactions. Yet the issuance of a refund check presents an important opportunity to bring these low-income taxpayers into the financial mainstream. The Act provides that Treasury may award demonstration project grants to eligible entities, to establish banking accounts for individuals who currently do not have an account. The Act also requires a study on the feasibility of delivering tax refunds on debit, prepaid, and other electronic cards.

**Clarifies that the Standard of Review for Innocent Spouse Cases is De Novo.** Married taxpayers who file joint returns are jointly and severally liable for any deficiency or tax due. An “innocent spouse” statute, Internal Revenue Code (IRC) 6015, provides for relief from deficiencies in specific circumstances, and also provides for “equitable” relief for taxpayers who do not meet the specific circumstances set forth in the statute. Relief under the “equitable” innocent spouse relief provision is appropriate when, taking into account all the facts and circumstances, it would be inequitable to hold a joint filer liable for the unpaid tax or deficiency.

This legislation will clarify that the proper standard of review in equitable innocent spouse relief cases is de novo, meaning that the Tax Court will be required to consider the case anew, without deference to any IRS determination to deny relief. This will ensure that taxpayers seeking innocent spouse equitable relief retain the ability to flesh out facts and circumstances of their cases that may not have been fully developed during administrative review.

### **Requires Additional Studies on Improving Taxpayer Services**

- Study on the Delivery of Tax Refunds. Requires Treasury to complete a study assessing the design and implementation of the pilot in the 2011 tax season to deliver tax refunds on prepaid/debit cards, and to carry out a new pilot program to deliver refunds on these cards incorporating recommendations contained in the report.
- Study on Processing of Information Returns. Currently, the IRS processes income tax returns before it processes most information returns, such as W-2s and 1099s. From the taxpayer’s perspective, this leads to millions of cases where taxpayers may inadvertently make overclaims that the IRS does not identify until months later, exposing the taxpayer not only to additional tax liability, but to penalties and interest. This sequence also provides opportunities for fraud and requires the IRS to devote resources that should have not been paid and that it often cannot recover. The Act requires Treasury to conduct a study to identify and recommend legislative and administrative changes that would enable the IRS to receive and process information reporting documents before it processes tax returns.
- Study on the Effectiveness of Collection Alternatives. The Act requires Treasury to conduct a study to assess the effectiveness of collection alternatives, especially offers in compromise, on long-term tax compliance.